

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Petitions of |) | |
| Global Crossing Telecommunications, Inc., |) | WC Docket No. 04-424 |
| and SBC Communications, Inc. |) | |
| for Declaratory Ruling |) | |
| |) | |

COMMENTS OF AT&T CORP.

David L. Lawson
Paul J. Zidlicky
Christopher T. Shenk
Sidley Austin Brown & Wood L.L.P.
1501 K St. N.W.
Washington, D.C. 20005
(202) 736-8000

Leonard J. Cali
Lawrence J. Lafaro
Judy Sello
AT&T Corp.
Room 3A229
One AT&T Way
Bedminster, NJ 07921
(908) 532-1846

Attorneys for AT&T Corp.

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COMMENTS OF AT&T CORP.

Pursuant to the Commission's *Notice*,¹ AT&T respectfully submits these comments in response to the petitions filed by Global Crossing and SBC.

INTRODUCTION AND SUMMARY

SBC admits that it is charging Global Crossing, AT&T and other access customers *intrastate* access rates for "roaming" wireless voice telephone calls that include only *interstate* communications. Under longstanding Commission precedent that recognizes the impropriety of treating mobile phones as if they were fixed within the states associated with their assigned telephone numbers, these wireless calls are unquestionably subject only to *interstate* access charges. SBC contends that it is free to disregard the governing law, because its unlawful practice is sanctioned by its federal tariff; in fact, SBC's practice violates the plain language of its tariff as well. Although a number of incumbent local exchange carriers ("LECs") have agreed that access charges on such wireless traffic – like other traffic for which jurisdiction cannot be

¹ Public Notice, *Pleading Cycle Established for Petitions of Global Crossing Telecomms., Inc. & SBC Comms., Inc. for Declaratory Ruling*, WC Docket No. 04-424 (released Dec. 8, 2004) ("*Notice*").

determined from call detail – must be billed using usage factors, SBC and other large LECs continue to overcharge access customers many millions of dollars each month. AT&T requests that the Commission put an immediate stop to this unlawful practice by ruling that SBC and other LECs engaged in the same practice may not treat wireless calls as *intrastate* calls based solely on a comparison of the telephone number of a mobile telephone with that of the called number.

The issue raised by the Global Crossing and SBC petitions is unusually straightforward. Wireless carriers typically purchase wholesale long-distance services from AT&T and other facilities-based interexchange carriers. To complete a call for a wireless customer, the interexchange carrier obtains the call from the wireless carrier, transmits the call to the local exchange where the called party is located, and then, to complete the call, purchases terminating access service from the local exchange carrier, such as SBC, that serves the called party. The applicable terminating access charge depends, of course, on whether the call is jurisdictionally interstate or intrastate, and it is well settled that the jurisdiction of wireless calls is determined by whether the call crosses state lines to reach the called party and not by arbitrary reference to the home state telephone number assigned to a mobile telephone that can be transported to and can originate calls from virtually anywhere. *See, e.g., CMRS NPRM* ¶ 112 (“if a cellular customer from Richmond travels to Baltimore and then places a call to Alexandria, the call might appear to be an intrastate call, placed from a Virginia telephone number to another Virginia number, but would in fact be interstate because the call originates in Maryland and terminates in Virginia.”).²

² *Interconnection Between Local Exchange Carriers And Commercial Mobile Radio Service Providers; Equal Access And Interconnection Obligations Pertaining To Commercial Radio Service Providers*, 11 FCC Rcd. 5020 (1996) (“*CMRS NPRM*”).

Indeed, the governing federal SBC access tariff recognizes that where, as in the case of “roaming” wireless calls, the jurisdiction of a call cannot be determined by comparing the phone numbers of the calling and called parties, jurisdiction must be determined through percent interstate usage (“PIU”) factors submitted by the access customer in “Jurisdictional Reports” (which are, of course, subject to audit by SBC). Thus, SBC’s interstate access tariffs expressly state that where call detail information is insufficient to “determine jurisdiction, the customer will provide an interstate percentage.” SWBT Tariff F.C.C. No. 73 § 2.4.1(A)(2)(b). When that occurs, SBC is required by its tariff to bill the access customer based upon the usage percentages provided. *Id.* (“If a LATA-level PIU factor is provided by the customer, the specified percentage *will be applied* to all end offices to which the customer may terminate traffic within the LATA or to those end offices for which an end office-level PIU is not provided”) (emphasis added). AT&T has provided SBC with usage percentages, and under the plain language of SBC’s tariff, SBC is therefore obligated – but refuses – to charge AT&T in accordance with those usage percentages.

SBC does not dispute (and, indeed, concedes) that its practice of “determining” jurisdiction by comparing the phone numbers of the called party and calling party causes it to misclassify enormous numbers of calls. Instead, SBC argues that other language in its tariff should be read to override the clear tariff requirement that usage factors, rather than call detail, be used. As detailed below, that argument is demonstrably false. In fact, the tariff provisions that SBC cites confirm that, under the tariffs (like the governing legal precedents), reliance upon usage factors is required where, as here, call detail is insufficient to determine jurisdiction. And, of course, even if the relevant tariff language did not so clearly state that SBC cannot determine the jurisdiction of calls for which call detail does not identify the location of the calling party,

any tariff ambiguities that SBC seeks to manufacture must be resolved against SBC and consistent with the governing law.

Accordingly, the Commission should grant Global Crossing's Petition and make clear that it is unlawful for LECs to determine the jurisdiction of wireless – and therefore mobile – calls solely by reference to calling and called party telephone numbers. The Commission should thus confirm that SBC's tariff does not allow it to determine the jurisdiction of wireless calls by comparing call detail information about the numbers of the calling and called parties, but instead requires SBC to utilize the customer-supplied usage factors required by the tariff to bill access charges for those calls.

BACKGROUND

The defining characteristic of wireless telephones is mobility. Wireless callers who purchased a phone in one state may travel to another state and make calls back to their home states. For such calls, a comparison of the calling number and called number might lead some to conclude – erroneously – that the calls were intrastate because the phone number of both the calling and called parties would be associated with the same state. In fact, however, such calls involve only interstate communications, and SBC's practice of assessing intrastate access charges for these calls is plainly wrong.

SBC gains nothing by directing the Commission to SBC's access tariffs. The relevant language from SBC's tariff—which SBC quotes only selectively—recognizes that call detail may be inadequate to determine the jurisdiction of a call, and sets forth the process when the jurisdiction cannot be determined from the call detail.

For FGC, FGD, BSA-C or BSA-D Switched Access Services, *where jurisdiction can be determined from the call detail*, the Telephone Company will bill according to such jurisdiction by

developing a projected interstate percentage. The projected interstate percentage will be developed on a monthly basis, by end office, when the Switched Access Service access minutes (FGC, FGD, BSA-C and BSA-D) are measured by dividing the measured interstate terminating access minutes (the access minutes where the calling number is in one state and the called number is in another state) by the total terminating access minutes.

For FGC, FGD, BSA-C and BSA-D Switched Access Services *where call details are insufficient to determine jurisdiction*, the customer will provide an interstate percentage of FGC, FGD, BSA-C or BSA-D terminating access minutes for each end office or LATA from which the customer may terminate traffic. If a LATA-level PIU factor is provided by the customer, the specified percentage *will be applied* to all end offices to which the customer may terminate traffic within the LATA or to those end offices for which an end office-level PIU is not provided.

SWBT Tariff F.C.C. No. 73 § 2.4.1(A)(2)(b) (emphasis added). By its terms, the first paragraph applies only “where jurisdiction can be determined from the call detail.” *Id.* In contrast, if “call details are insufficient to determine jurisdiction,” then “the customer” (*e.g.*, AT&T) “will provide an interstate percentage . . . of terminating access minutes . . .” *Id.*

SBC concedes—as it must—that it does not know the location of a wireless customer based upon that customer’s wireless phone number. Yet SBC has refused to comply with its tariff and governing law and continues to bill (and overcharge) based upon call detail. In a lawsuit filed in federal district court in Missouri, Global Crossing has sought to recover damages for overcharges resulting from SBC’s treatment of interstate wireless calls as intrastate. Similarly, in litigation in federal district court in Missouri, AT&T seeks to recover monthly overcharges resulting from SBC’s improper treatment of wireless calls.³ Other incumbent LECs

³ In both instances, SBC asked that the claims against it be dismissed so that the Commission could address the allegations set forth by Global Crossing and AT&T. The federal district court overseeing the Global Crossing case declined to dismiss Global Crossing’s claim, but it did stay its proceedings pending referral of this issue to the Commission. In the SBC-AT&T litigation, the district court has not ruled on SBC’s primary jurisdiction motion; proceedings in that case have been stayed by the Eighth Circuit pending a decision on an interlocutory appeal.

are engaged in the same unlawful practice, and the same issues are raised, for example, in litigation between BellSouth and AT&T in federal district court in Georgia.⁴

ARGUMENT

I. SBC'S POSITION THAT IT CAN DETERMINE THE JURISDICTION OF A WIRELESS CALL BASED SOLELY UPON THE CALLING AND CALLED PARTY NUMBERS IS CONTRARY TO SETTLED LAW.

In recognition of the fact that wireless telephones can be moved across state lines, it is well settled that the jurisdiction of wireless telephone calls cannot be determined by the telephone number assigned to the wireless telephone. Rather, a wireless call is jurisdictionally interstate if it involves "communication or transmission . . . from any State . . . to any other State." 47 U.S.C. § 153(22).

In 1986, the Commission released the "FCC Policy Statement on Interconnection of Cellular Systems" in which it acknowledged that "some cellular carriers provide their customers with a service whereby a call to a subscriber's local cellular number will be routed to them over interstate facilities when the customer is 'roaming' in a cellular system in another state."⁵ The FCC explained that, in such a case, "the cellular carrier is providing . . . *interstate, interexchange service*." *Id.* (emphasis added).

In 1996, the Commission confirmed that the jurisdiction of mobile telephone services, including wireless telephone services, cannot accurately be determined based solely on a comparison of originating and terminating telephone numbers. First, the Commission explained the problem in the *CMRS NPRM*:

⁴ *BellSouth Telecomms., Inc. v. AT&T Corp.*, No. 1:04-CV-2777 (N.D. Ga. 2004).

⁵ Memorandum Opinion and Order, *Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 59 R.R.2d 1275, Appendix B at n.3 (1986) ("FCC Wireless

much of the LEC-CMRS traffic that may appear [based on telephone numbers] to be intrastate may actually be interstate, because CMRS service areas often cross state lines, and CMRS customers are mobile. For example, if a cellular customer from Richmond travels to Baltimore and then places a call to Alexandria, the call might appear to be an intrastate call, placed from a Virginia telephone number to another Virginia number, but would in fact be interstate because the call originates in Maryland and terminates in Virginia.

CMRS NPRM ¶ 112. Accordingly, the Commission rejected jurisdictional allocation methodologies for wireless calls that rely solely on a comparison of the originating and terminating telephone numbers.

Thereafter, in the *Local Competition Order* (¶ 1043 & n.2485), the Commission confirmed that, for CMRS calls, “the geographic locations of the calling party and the called party determine whether a particular call should be compensated under transport and termination rates established by one state or another, or under interstate or intrastate access charges,” *id.* ¶ 1044; *see also id.* ¶ 1043 (wireless “‘roaming’ traffic that transits incumbent LECs’ switching facilities . . . is subject to interstate access charges”); *id.* ¶ 1043 n.2485 (quoting *FCC Wireless Policy Statement*).⁶ Specifically, the Commission addressed whether wireless calls should be subject to reciprocal compensation charges, intrastate access charges, or interstate access charges. *Local Competition Order* ¶¶ 1043-44. The Commission recognized that the geographic location where a wireless call is *terminated* will generally be known by the LEC that provides the terminating service, but the location where the call *originated* may not be known. *Id.*

Policy Statement”).

⁶ First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd. 15499 (1996) (“*Local Competition Order*”).

To address this problem, the Commission concluded that carriers “may calculate overall compensation amounts” using jurisdictional allocations that “extrapolat[e] from traffic studies and samples.” *Id.* ¶ 1044. The Commission, however, made clear that such studies and samples must be based on originating and terminating geographic locations associated with the call: “the location of the initial cell site when a call begins *shall* be used as the determinant of the geographic location of the mobile customers.” *Id.*⁷ Simply put, the Commission has required that methods for assigning jurisdiction must reflect the geographic locations of the calling and called parties to the wireless call.⁸

These Commission rulings inform the decision of the Federal-State Joint Board which examined this issue in 1998 and concluded that calling numbers should not be used to determine the geographic locations of originating mobile calls:

Such a test would not be useful to determine the originating point of a wireless call, because an area code is assigned to each wireless handset, and thus all calls from a particular handset would be recorded as being from the same area code, regardless of the location from which the call was actually placed.

⁷ As an alternative, the Commission held that “LECs and CMRS providers can use the point of interconnection between the two carriers at the beginning of the call to determine the location of the mobile caller or called party.” *Local Competition Order* ¶ 1044.

⁸ SBC takes out of context the Commission’s statement that “it is not necessary for incumbent LECs and CMRS providers to be able to ascertain geographic locations when determining the rating for *any particular call* at the moment the call is connected.” SBC Petition at 7 (quoting *Local Competition Order* ¶ 1044) (emphasis added). By acknowledging that parties would be unable, with regard to certain calls, to ascertain the geographic location of the calling party, the Commission in no way suggested that LECs could determine jurisdiction by comparing the phone numbers of the calling and called parties. Rather, the Commission continued that ascertaining geographic location was not a prerequisite for “*any particular call*,” *Local Competition Order* ¶ 1044 (emphasis added), because parties would be permitted to “extrapolat[e] from traffic studies and samples” and use “the location of the initial cell site when a call begins as the determinant of the geographic location of the mobile customer,” *id.*

Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, *Interim CMRS Safe Harbor Order*, 13 FCC Rcd. 21252, ¶ 31 n.63.⁹

More recently, the Commission reached similar conclusions with respect to other types of nomadic telephone services. In the *Vonage Decision*,¹⁰ the Commission reviewed a decision by the Minnesota Public Utilities Commission regarding the jurisdiction of calls made using voice over internet protocol (“VoIP”) service. Vonage’s VoIP service permits customers to place and receive telephone calls by connecting a small device to a broadband internet connection at any location. *Id.* ¶¶ 5-6. The customer is assigned a telephone number using the North American Numbering Plan, but because the customer can place a call from any location with an internet connection, that number has no necessary relationship to the telephone’s geographic location. *Id.* ¶ 9. The FCC explained that jurisdiction could not reasonably be determined by comparing telephone numbers because “if a Minnesota NPA/NXX subscriber residing in Minnesota used its service outside the state to call someone in Minnesota, that call would appear to be an intrastate call when it is actually interstate.” *Id.* ¶ 27.

⁹ SBC’s reliance upon a 1989 statement by the Federal-State Joint Board is wholly misplaced. See SBC Petition at 6 (quoting *Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service*, Recommended Decision and Order, CC Docket No. 85-124, 4 FCC Rcd. 1966, ¶ 3 n.7 (1989)) (“1989 Order”) (“ANI capability enables the carrier to identify the originating number of a call which when combined with the called number reveals the jurisdictional nature of the call”). In the 1989 Order, the Federal-State Joint Board was not even remotely addressing whether the jurisdiction of wireless calls can be determined by comparing the calling and called telephone numbers. Rather, the issue there was the proper treatment of Feature Group A and Feature Group B access services for which call detail did not contain information about the originating number of a call in the call detail. *Id.* ¶¶ 1-2.

¹⁰ Memorandum Opinion and Order, *Vonage Holdings Corporation, Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, WC Docket No. 03-211, 2004 WL 2601194, ¶ 17 (released Nov. 12, 2004) (“*Vonage Decision*”).

Likewise, in May 2004, Telcordia Technologies, in response to requests by several carriers, including SBC, prepared a presentation called “Determining Call Jurisdiction.” That presentation (a copy of which is attached here) concluded that “using CPN [customer telephone numbers] . . . for determining jurisdiction of . . . [wireless] roaming is *not* appropriate.” Report at 16 (emphasis in original). The report further confirmed that using telephone numbers to identify the jurisdiction of such calls would result in a situation where a “call might appear interexchange in nature when it is not.” *Id.*

Significantly, even SBC admits that it cannot determine the jurisdiction of wireless calls based on a comparison of the originating and terminating telephone numbers: “What the parties agree upon is that the call detail [*i.e.*, the originating and terminating numbers] . . . is insufficient to identify the *precise geographic location* of the originating wireless customer.” SBC Petition at 5 (emphasis in original). SBC wildly minimizes the problem. When SBC states that it is unable to identify the “*precise*” geographic location of the originating wireless customer, what SBC means is that it has no idea whether the calling customer is located in California or Connecticut, New York or New Delhi, Texas or Tokyo, Louisiana or London, or somewhere else entirely.

In sum, settled precedent dictates that the jurisdiction of a wireless call cannot be determined by comparing the numbers of the calling and called parties.

II. SBC’S OWN TARIFF REFUTES ITS CLAIM THAT THE JURISDICTION OF A WIRELESS CALL MAY BE DETERMINED BY COMPARING THE PHONE NUMBERS OF THE CALLING AND CALLED PARTIES.

SBC’s tariff expressly states that where the originating and terminating telephone numbers in call detail are insufficient to determine the jurisdiction of a call, SBC *must* allocate the jurisdiction of such calls using the PIU factor provided by the customer in the Jurisdictional

Reports mandated by Section 2.4.1 of its tariff. SBC, however, has refused to comply with the plain terms of its tariff, and continues to misallocate interstate traffic to the intrastate jurisdiction, thus overcharging AT&T and other access customers to the tune of millions of dollars each month. None of SBC's proposed "justifications" for doing so withstands scrutiny.

A. Where Call Detail Is Insufficient To Determine The Jurisdiction Of Wireless Calls, SBC's Tariff Requires SBC To Use The PIU Factors Provided By The Access Customer.

AT&T purchases "Feature Group D" (or "FGD") terminating switched access services from SBC to terminate wireless telephone calls. The provisions of SBC's federal interstate access tariff that govern the jurisdictional allocation of FGD terminating switched access service permit SBC to use call detail – *e.g.*, the originating and terminating telephone numbers – to assign the jurisdiction of a call *only if* that information is sufficient to determine the jurisdiction of a call:

For FGC, FGD, BSA-C or BSA-D Switched Access Services, *where jurisdiction can be determined from the call detail*, the Telephone Company will bill according to such jurisdiction by developing a projected interstate percentage. The projected interstate percentage will be developed on a monthly basis, by end office, when the Switched Access Service access minutes (FGC, FGD, BSA-C and BSA-D) are measured by dividing the measured interstate terminating access minutes (the access minutes where the calling number is in one state and the called number is in another state) by the total terminating access minutes.

SWBT Tariff F.C.C. No. 73 § 2.4.1(A)(2)(b) (emphasis added). Where call detail is insufficient to identify the jurisdiction of a call, SBC is required to use the jurisdictional allocation estimates provided in the access services customer's Jurisdictional Report:

For FGC, FGD, BSA-C and BSA-D Switched Access Services *where call details are insufficient to determine jurisdiction*, the customer will provide an interstate percentage of FGC, FGD, BSA-C or BSA-D terminating access minutes for each end office

or LATA from which the customer may terminate traffic. If a LATA-level PIU factor is provided by the customer, the specified percentage *will be applied* to all end offices to which the customer may terminate traffic within the LATA or to those end offices for which an end office-level PIU is not provided.

SWBT Tariff F.C.C. No. 73 § 2.4.1(A)(2)(b) (emphasis added).

Taken together, these two paragraphs of SBC's federal access tariff provide that, (1) *if* the jurisdiction of a call can be determined based on the call detail, (2) *then* SBC is obligated to determine the jurisdiction of the call through reference to the calling and called numbers. But (3) *if* call detail (*i.e.*, a comparison of the originating and terminating telephone numbers) is not sufficient to determine the jurisdiction of a call, (4) *then* SBC must use the PIU factor supplied by the access customer to allocate calls to the appropriate jurisdiction.

As demonstrated in Part I, *supra*, there is no dispute that call detail consisting only of the originating and terminating telephone numbers is insufficient to determine the jurisdiction of wireless telephone calls. Accordingly, pursuant to its governing tariff, SBC is *required* to use the PIU factor provided by the customer to determine the jurisdiction of these wireless calls. *Id.* § 2.4.1(A)(2)(b) ("where call details are insufficient to determine jurisdiction, the customer will provide an interstate percentage of . . . FGD . . . terminating access minutes" and that "specified percentage *will be applied*") (emphasis added). Because AT&T has, for at least the past two years, provided SBC with quarterly Jurisdictional Reports that appropriately reflect the wireless calls terminated by SBC (and other traffic for which jurisdiction cannot be determined from call detail), SBC is required to use the reported factors to allocate the jurisdiction of those wireless calls and to bill AT&T in a manner consistent with those allocations.

B. Contrary to SBC's Assertions, Its Tariff Lends No Support For Its View That It May Use The Originating And Terminating Telephone Numbers Of Wireless Calls To Compute Terminating Access Charges.

According to SBC, certain parenthetical language in Section 2.4.1 of its tariff can be construed to mean that SBC can "determine the jurisdiction of terminating access traffic with reference to the called and calling party telephone numbers when that information is included in the call detail." SBC Petition at 4. In fact, however, there is no provision in SBC's tariff, and SBC identifies none, that allows SBC to use originating and terminating telephone numbers to assign the jurisdiction of wireless calls when the calling telephone is located in a state other than the state associated with the area code of the telephone number. To the contrary, SBC's tariff explicitly states that SBC may not assign jurisdiction to a call where, as here, "call details are insufficient to determine jurisdiction." SWBT Tariff F.C.C. No. 73 § 2.4.1(A)(2)(b). As explained above, a comparison of telephone numbers included in call detail is insufficient to identify the jurisdiction of any particular wireless calls. Thus, pursuant to the plain language of SBC's tariffs, those telephone numbers cannot, consistent with SBC's tariff, be used to assign the jurisdiction of wireless calls for billing purposes.

SBC purports to find support for its erroneous interpretation in the following language:

The projected interstate percentage will be developed on a monthly basis, by end office, when the Switched Access Service access minutes . . . are measured by dividing the measured interstate terminating access minutes (*the access minutes where the calling number is in one state and the called number is in another state*) by the total terminating access minutes.

SWBT Tariff F.C.C. No. 73 § 2.4.1(A)(2)(b) (emphasis added). According to SBC, the parenthetical statement means that, for all purposes under its tariffs, "terminating interstate access minutes" are "access minutes where the *calling number* is in one state and the *called*

number is in another state.” SBC Petition at 3 (emphasis in original). SBC then argues that “under SWBT’s tariffs, SWBT will determine the jurisdiction of terminating access traffic with reference to the called and calling party telephone numbers when that information is included in the call detail.” SBC Petition at 3-4.

SBC’s argument is a classic *non sequitur*. The portions of the tariff quoted by SBC – *i.e.*, that “terminating interstate access minutes” are “access minutes where the calling number is in one state and the called number is in another state” – merely define how call detail information will be used to assign calls to the interstate jurisdiction in cases (such as traditional wireline calls) “*where jurisdiction can be determined from the call detail*.” That does not mean that the calling and called numbers can be used to determine the jurisdiction of a wireless call when the calling number has *no* necessary relationship to the state in which the calling party is located while making the call. On the contrary, the sentence immediately preceding the statement relied on by SBC makes clear that SBC may use this call detail only “*where jurisdiction can be determined from the call detail*.” SWBT Tariff F.C.C. No. 73 § 2.4.1(A)(2)(b). Otherwise, SBC must use the usage factors provided by its access service customers. *Id.*

Indeed, even if the parenthetical language upon which SBC relies could be viewed in artificial isolation, it still would not assist SBC. SBC argues that it is permitted to assign wireless calls to the intrastate jurisdiction unless the call detail shows that “the calling number is *in* one state and the called number is *in* another state.” SBC Petition at 3 (emphasis added). But, as SBC concedes, it cannot determine what state the caller is “in” based on the call detail information because it does not reflect whether the caller, and hence the calling number, is “in” New York, California, or some other state. SBC can determine at best where the calling

number is “from,” *i.e.*, the assigned home-state of the wireless number. Thus, the plain meaning of SBC’s tariff confirms that it can use call detail to determine jurisdiction only when the call detail shows whether the calling number is in one state and the called number is in another state. Because call detail is insufficient to determine the jurisdiction of wireless calls, SBC must use the allocation factors provided by its customers to allocate such traffic to the interstate and intrastate jurisdiction.¹¹

Finally, even if SBC’s federal tariff were sufficiently ambiguous that it could be construed as SBC proposes, it is black letter law that any such ambiguity must be resolved against SBC, the party that drafted the tariff. *See, e.g.*, Order on Reconsideration, *Bell Atlantic-Delaware, Inc. v. Global Naps, Inc.*, 15 FCC Rcd. 5997, ¶ 22 (2000) (“ambiguous tariff provisions must be construed against the drafting carrier”).¹² Or, as the Supreme Court similarly has explained, “where two constructions of a written contract are possible, preference will be given to that which does not result in violation of law.” *Great Northern Ry. Co. v. Delmar Co.*, 283 U.S. 686, 691 (1931).¹³ Here, the only reading of SBC’s tariff that is consistent with the Act

¹¹ Put another way, SBC appears to equate the words “calling number” with a fixed physical location. But, in the context of wireless telephones that are by their very nature mobile, the “calling number” has no fixed physical location. It is the mobile telephone set associated with a particular number which has a – variable – physical location. That is why SBC’s tariff further requires a determination whether “the calling number is *in* one state.” SWBT Tariff F.C.C. No. 73 § 2.4.1(A)(2)(b).

¹² *See also* Memorandum Opinion and Order, *Halprin, Temple, Goodman, & Sugrue v. MCI Telecomms. Corp.*, 13 FCC Rcd. 22568, ¶ 13 n.47 (1998) (“if there is an ambiguity in tariffs they should be construed against the framer and favorably to users”) (quoting *Associated Press*, Memorandum Opinion and Order, 72 F.C.C.2d 760, ¶ 11 (1979)); Memorandum Opinion and Order, *American Satellite Corp. v. MCI Telecomms. Corp.*, 57 F.C.C.2d 1165, ¶ 6 (1976) (“a carrier, having prepared tariff schedules for interstate commerce, is not entitled to have them liberally construed in its own favor”).

¹³ *See also* Memorandum Opinion and Order, *Eastern Airlines, Inc. v. AT&T Co.*, 13 F.C.C.2d 911, ¶¶ 12-13 (1968) (finding interpretation suggested “would raise [a] substantial question of the lawfulness of such a provision”); *Nat’l Van Lines, Inc. v. United States*, 355 F.2d 326, 332-33

and the Commission's rulings is that SBC must use the jurisdictional allocation factors provided by AT&T to allocate wireless calls terminated by SBC's for AT&T. By contrast, SBC's reading of the tariff violates the Act and Commission precedent, which preclude allocating wireless calls to the interstate and intrastate jurisdictions based solely on the originating and terminating telephone numbers because that information is inadequate to identify the geographic location of the wireless caller.¹⁴

Unable to find support in the tariff or the law, SBC asserts that "[t]he use of call detail to determine jurisdiction is . . . fully supported by longstanding industry practice." SBC Petition at 8. That claim is baseless. In fact, a number of other large local exchange carriers have agreed that a comparison of the numbers of the calling and called parties is inadequate to determine the jurisdiction of wireless calls. Accordingly, those carriers now use the allocation factors provided by AT&T.

(7th Cir. 1966) ("a tariff should receive a construction that produces charges that are legal in preference to one which would produce illegal rates"); *Penn Central Co. v. General Mills, Inc.*, 439 F.2d 1338, 1341 (8th Cir. 1971) ("a strict construction of a tariff against a carrier is not justified where such a construction ignores a permissible and reasonable construction which . . . avoids possible violations of the law").

¹⁴ SBC's argument that the "tariff language at issue has been in effect for more than a decade," SBC Petition at 1, is immaterial. It is only within the course of the last few years that wireless roaming, and the corresponding inability to allocate jurisdiction based on a comparison of the calling and called numbers, has become an issue of significant economic consequence.

CONCLUSION

For these reasons, the petition of Global Crossing should be granted and the Commission should rule that SBC's practice of determining the jurisdiction of a wireless call by comparing the calling and called numbers is unlawful and contrary to SBC's tariff.

Respectfully submitted,

AT&T Corp.

By /s/ Judy Sello

Leonard J. Cali
Lawrence J. Lafaro
Judy Sello
AT&T Corp.
Room 3A229
One AT&T Way
Bedminster, NJ 07921
(908) 532-1846

David L. Lawson
Paul J. Zidlicky
Christopher T. Shenk
Sidley Austin Brown & Wood L.L.P.
1501 K St. N.W.
Washington, D.C. 20005
(202) 736-8000

Attorneys for AT&T Corp.

Dated: January 7, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of January, 2005, I caused true and correct copies of the forgoing Comments of AT&T Corp. to be served on the following parties by first class mail to their addresses listed on the attached service list.

Dated: January 7, 2005
Washington, D.C.

/s/ Peter M. Andros

Peter M. Andros

SERVICE LIST

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554¹⁵

Fred Campbell
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-A333
Washington, D.C. 20554

Best Copy & Printing
Portals II
445 12th Street, SW
Washington, D.C. 20554

Danny E. Adams
W. Joseph Price
Tamara E. Conner
Kelley Drye & Warren LLP
8000 Towers Crescent Drive
Suite 1200
Vienna, VA 22182

Jim Lamoreaux
Gary Phillips
Paul K. Mancini
SBC Communications, Inc.
1401 Eye Street, NW, Suite 400
Washington, D.C. 20005

¹⁵ Filed electronically

Attachment



Determining Call Jurisdiction

Prepared For:
May 2004
OBF Billing Committee Meeting

Bill Krall
(732) 758-4296
wkrall@telcordia.com

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Issue 2735

Telcordia Presentation

- Telcordia was invited to provide “some common ‘grounding’ to promote discussion” of Issue 2735 in terms of:
 - what might be signaled in various call scenarios (Signaling System 7 (SS7) vs. Multifrequency signaling (MF))
 - what might be recorded (Originating AMA vs. Terminating AMA, Switch Vendors/Features)
 - how this signaled/recorded information might map into the Electronic Message Interface (EMI) (From Number or "New" Number Field)

Issue 2735

Questions for Consideration

- What is the distinction between Charge Number (ChN), Calling Party Number (CPN), Redirecting Number (RN), and Original Called Number (OCN)?
- With what [BAF] AMA Structure Codes is Module 164 associated?
- Can more than one Module 164 be appended to an AMA Structure Code?
- If multiple 164 modules are possible (today or near future), then what number (signaling parameter) is most appropriate to map into Access EMI Category 11 records?

Questions for Consideration

SS7 Parameters

- What is the distinction between Charge Number (ChN), Calling Party Number (CPN), Redirecting Number (RN), and Original Called Number (OCN)?
- Charge Number (ChN) parameter
 - contains, when available, the ten NPA+NXX+XXXX address digits of the Automatic Number Identification (ANI) in the address information field
 - An originating switch includes the ChN, as a pair with the Originating Line Information Parameter (OLIP), in an Initial Address Message (IAM) based on the outgoing Trunk Group (TG) and class of service (i.e., originating screening and routing options)
 - Available on originating calls placed over Feature Group D (FGD) trunk groups

Questions for Consideration

SS7 Parameters – Charge Number

- Charge Number (ChN) parameter (continued)
 - The ChN is omitted from the IAM at the originating switch if all of the following conditions are met:
 - The outgoing trunk group is FGD
 - The Calling Party Number (CPN) parameter is included in the IAM
 - The ChN address digits agree with the CPN address digits.
 - The presence of the OLIP together with the absence of the ChN parameter will inform the receiving switch that the ChN address agrees with the CPN address
 - ChN (CPN w/OLIP) is always populated in the IAM in a FGD access arrangement from the originating LEC switch to the Interexchange Carrier (IXC) but ChN is not populated in the IAM when received from the IXC by the LEC switch for delivery to the called party
 - ChN (CPN w/OLIP) is not populated on call placed over interoffice (non-equal access) TGs

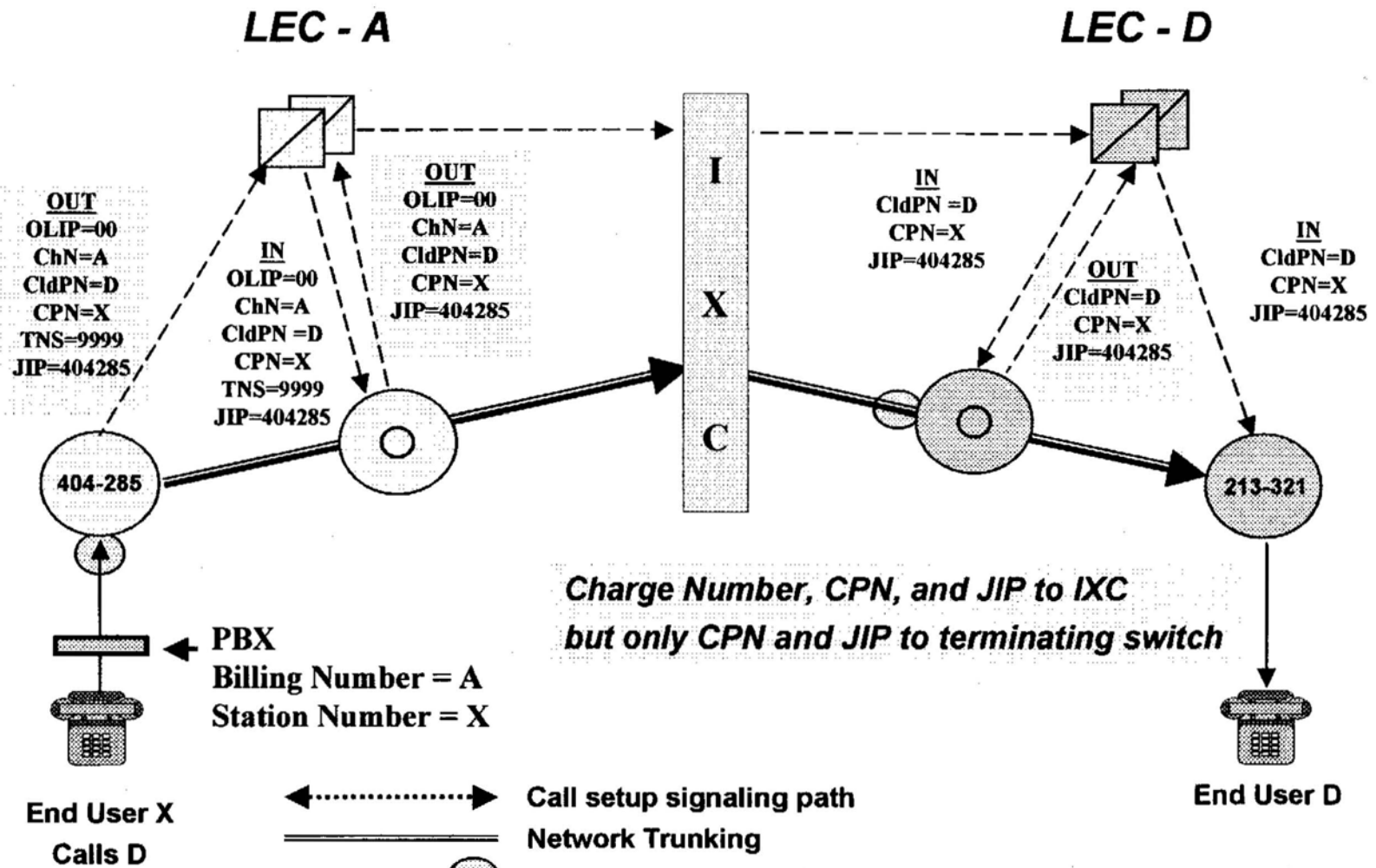
Questions for Consideration

SS7 Parameters – Calling Party Number

- The CPN parameter includes the address digits of the specific station set originating the call
 - CPN is an optional parameter and is not always present
 - Signaling standards recommend that CPN (when available) be maintained end-to-end for a call
 - CPN need not be the same number provided by the Automatic Number Identification (ANI) feature of the inband (MF) exchange access signaling
 - For Equal Access MF – SS7 interworking at an access tandem
 - ANI and ANI Information Digits (II) populate the ChN and OLI parameters respectively in the outgoing IAM
 - CPN is *not* populated in the IAM when EAMF – SS7 interworking occurs

SS7 Parameters for Jurisdiction

Originating/Terminating FGD



Reference: GR-394-CORE

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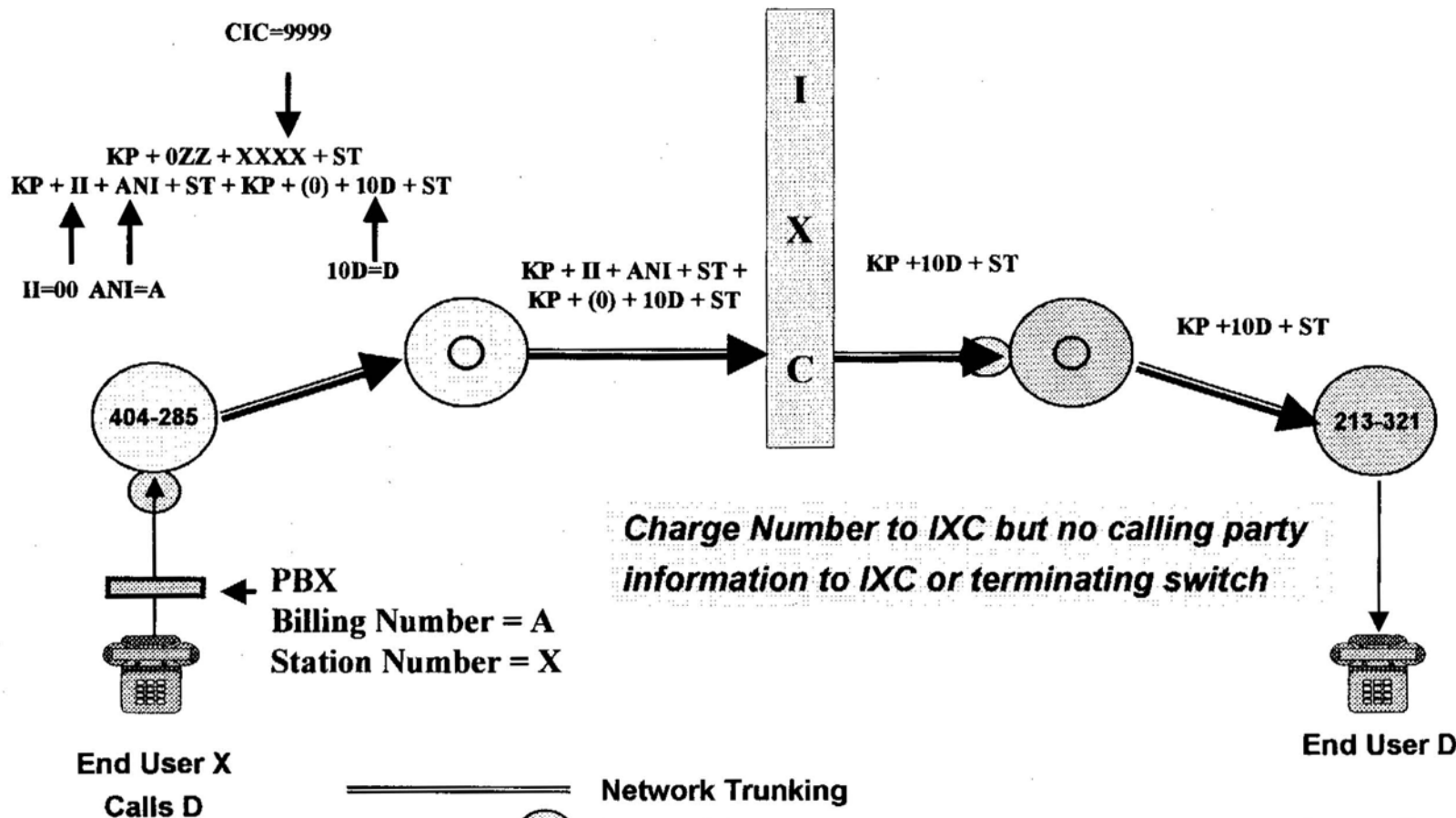
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SS7 Parameters for Jurisdiction

Originating/Terminating FGD – MF

LEC - A

LEC - D

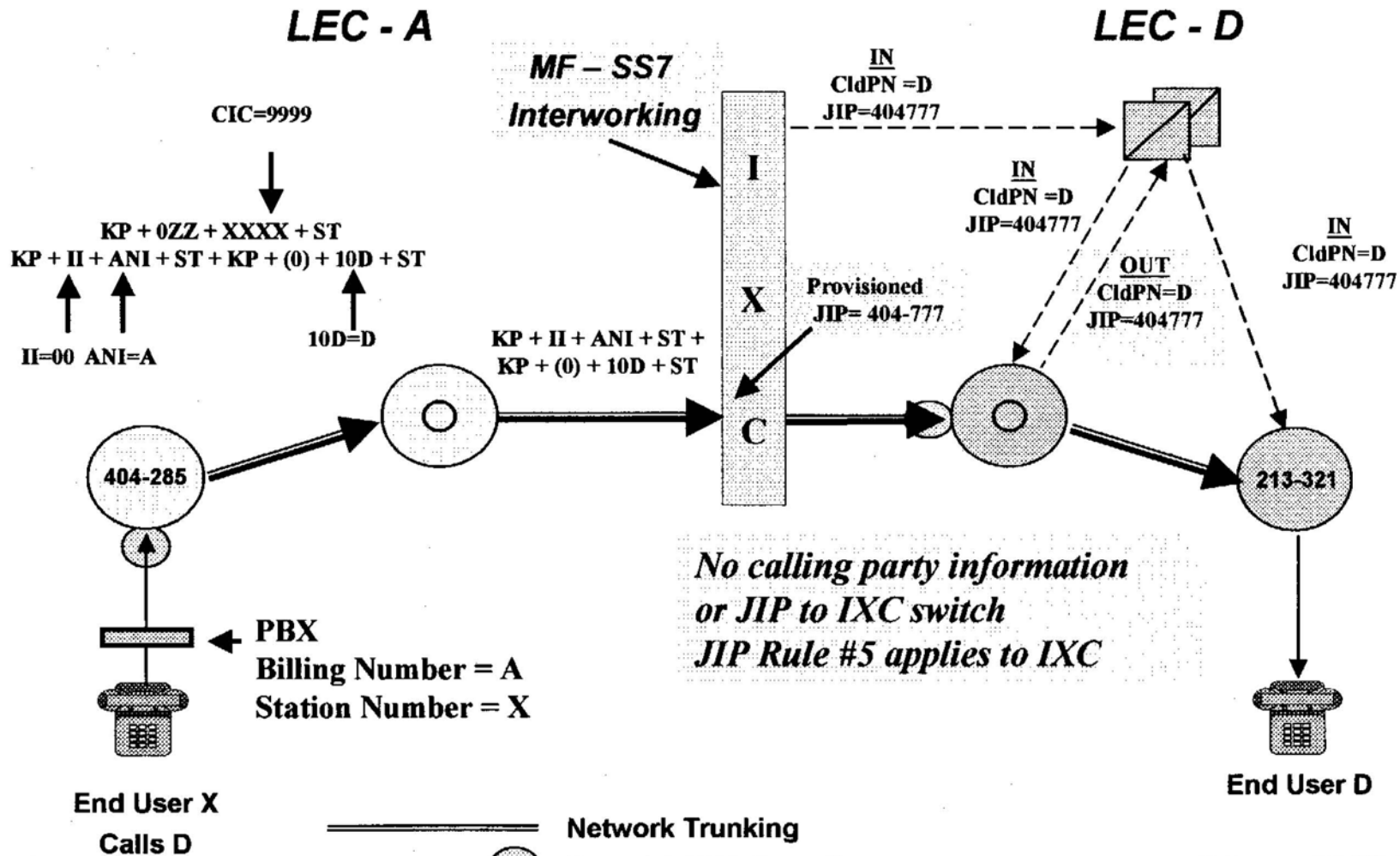


Reference: GR-690-CORE

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SS7 Parameters for Jurisdiction

Originating/Terminating FGD – MF

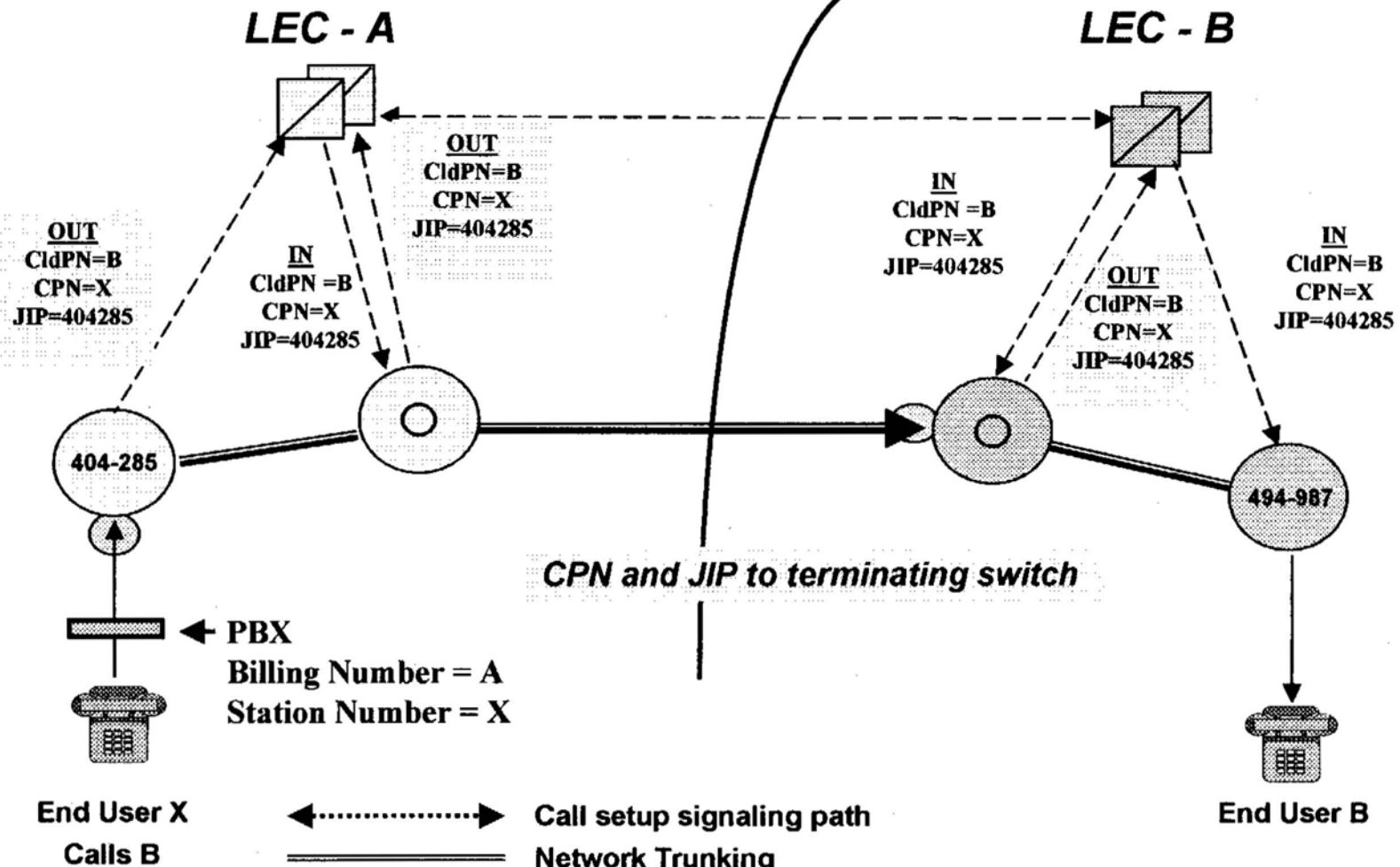


Reference: GR-690-CORE

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SS7 Parameters for Jurisdiction

LEC Interconnection (Originating LEC Bills the End User)

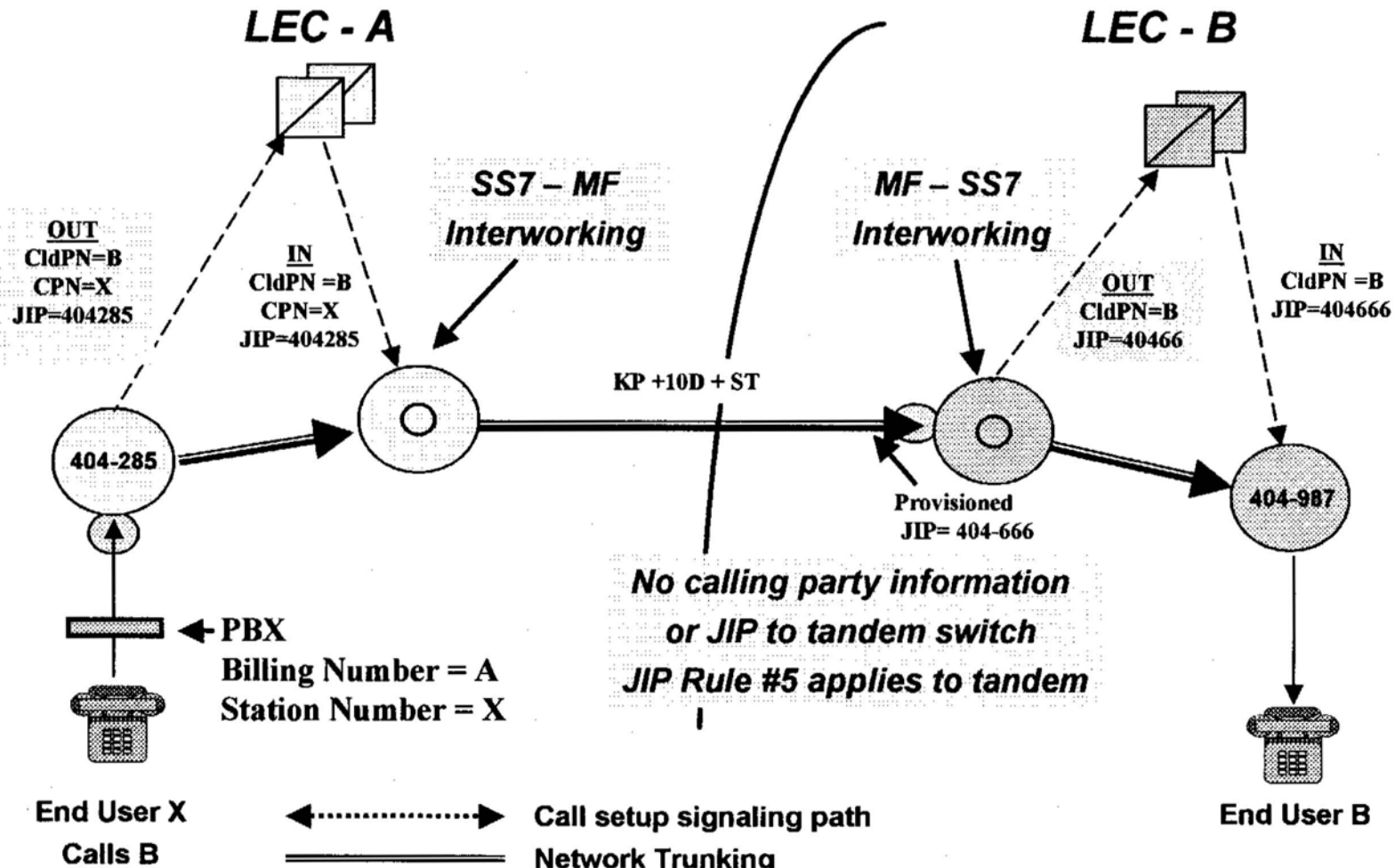


Reference: GR-317-CORE

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SS7 Parameters for Jurisdiction

LEC Interconnection (Originating LEC Bills the End User)



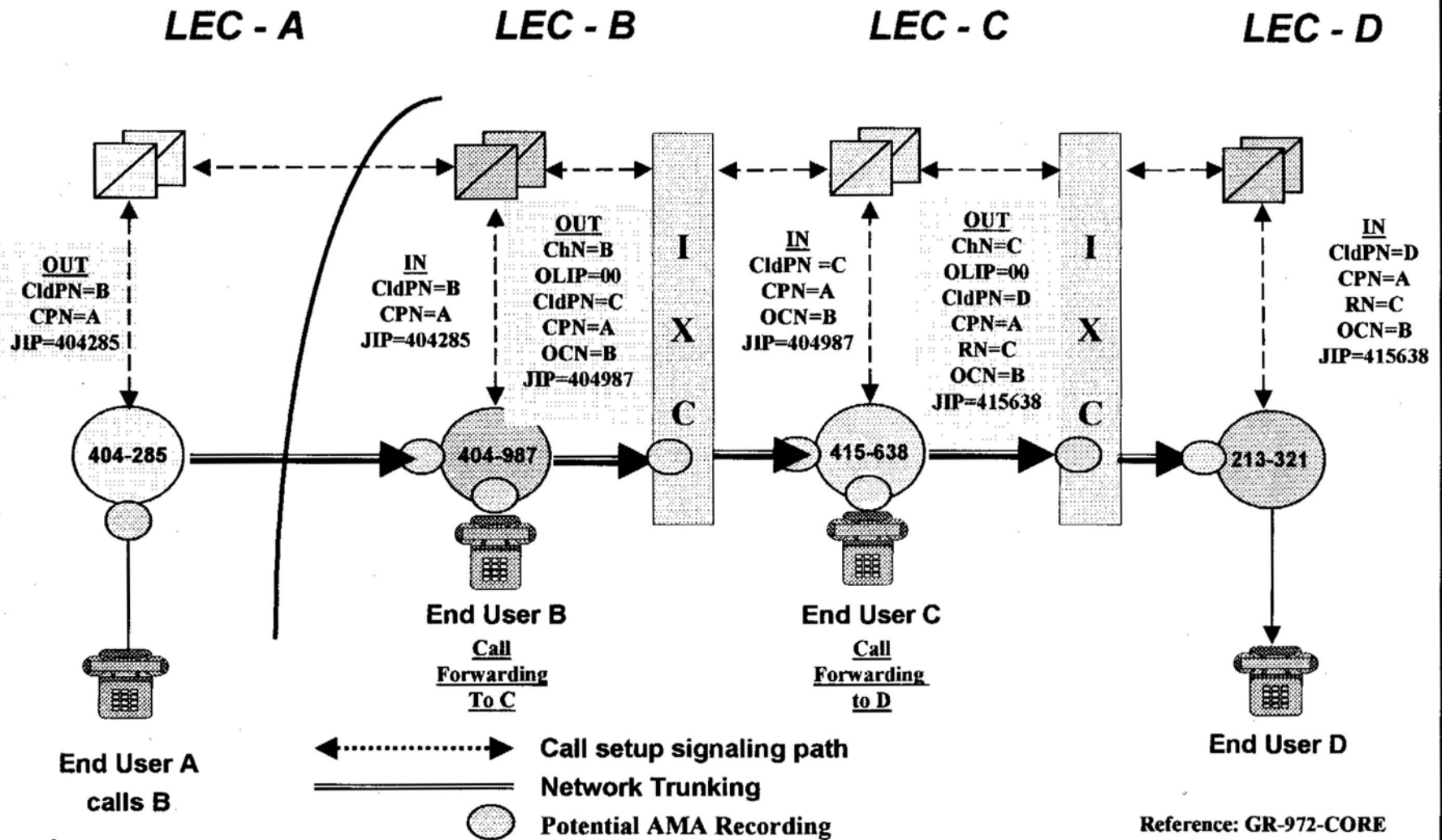
Reference: GR-317-CORE

Questions for Consideration

SS7 Parameters – OCN and RN

- Note: the following parameters are only present for instances of call forwarding and are optional parameters
- Original Called Number (OCN) parameter in the IAM conveys the redirecting number value associated with the first (or original) instance of call forwarding
- Redirecting Number (RN) parameter conveys the redirecting number value associated with the latest instance of call forwarding
 - When more than one instance of call forwarding occurs
 - the OCN carries the first redirecting number from the first instance of call forwarding, and
 - the RN carries the last redirecting number from the last instance of call forwarding

SS7 Parameters for Jurisdiction Call Forwarding Scenario



Reference: GR-972-CORE

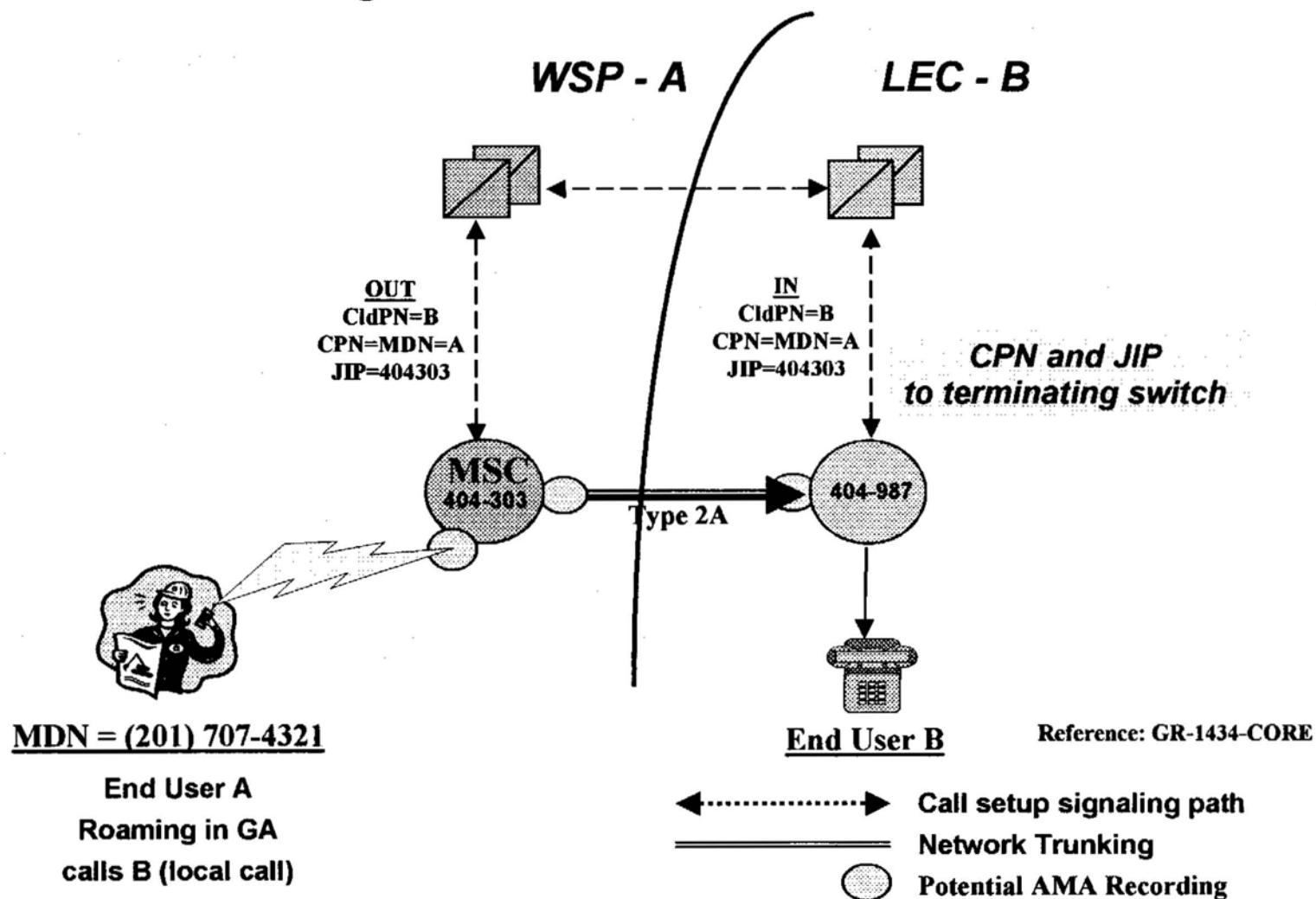
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SS7 Parameters for Jurisdiction Call Forwarding Scenario

- Jurisdiction of the three calls
 - A to B – Intrastate (GA)
 - CPN of A and JIP of 404285
 - CldPN of B
 - Call Forwarding from B to C – Interstate (GA to CA)
 - ChN of B, OCN of B and JIP of 404987
 - CldPN of C
 - Note: Using CPN for determining jurisdiction for the forwarded call is not appropriate
 - Call Forwarding from C to D – Intrastate (CA)
 - ChN of C, RN of C and JIP of 415638
 - CldPN of D
 - Note: Using CPN for determining jurisdiction for the forwarded call is not appropriate

SS7 Parameters for Jurisdiction Wireless Roaming Scenario



SS7 Parameters for Jurisdiction Wireless Roaming Scenario

- Jurisdiction of call
 - End User A roaming in GA to B – Intrastate (GA)
 - CldPN of B
 - JIP of A
 - Note: Using CPN (where CPN = MDN) for determining jurisdiction for this roaming call is not appropriate
- This scenario points out that if JIP is not present in the signaling, then the identification of the jurisdiction falls back on the content of the Type 2A AMA
 - Switch generic for Type 2A may not include multiple 164 Modules
 - Call might appear interstate when it is not
 - Call might appear interexchange in nature when it is not

Questions for Consideration

Module 164 & Number of Modules

- With what AMA Structure Codes is Module 164 associated?
 - Module 164 is associated with
 - BAF Structures 0001*, 0500*, **0625**
 - BAF Call Types 006*, 063*, 064*, 065*, 066*, **110**, **119**, 720*
- Can more than one AMA Module 164 be appended to an AMA Structure Code? Answer: Yes
 - Telcordia modified the Connecting Network Access (CNA) requirements in Issue 4 of GR-1083-CORE*, *Generic Requirements for Exchange Access Automatic Message Accounting (AMA) (FSD 20-25-0000)* in January 2003
 - Differ from the TRQ No. 2 requirements in that the option to record the provisioned Billing Number (BN) in the SC 0625 when CTC 720 is generated is replaced by a requirement to always provision a BN on the CNA trunk group
 - The BN is recorded in the Structure Code and any calling party information available in signaling, (e.g., the CPN and/or ChN) will each be appended in a separate Module 164

***Check with your switch manufacturer**

Questions for Consideration

Number of Modules

- Telcordia has published modifications to Wireless Service Provider (WSP) requirements in Issue 4 (May 2003) of GR-1504-CORE*, *Generic Requirements for Wireless Service Provider (WSP) Automatic Message Accounting (AMA)*
 - Issue 4 requires a provisioned BN on the Type 2A or Type 2B trunk group
 - New requirements call for always recording the BN in the Structure Code
 - Any additional calling party information available in signaling (e.g., CPN, ChN, OCN, or RN) is appended in a separate Module 164

***Check with your switch manufacturer**

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Questions for Consideration

Populating EMI Category 11 Records

- If multiple 164 Modules are possible (today or near future), then what number (signaling parameter) is most appropriate to map into Access EMI Category 11?
 - For access purposes the CPN would 'appear' to be the most useful number (signaling parameter) for determining jurisdiction, however....
 - CPN is an optional parameter – may not be there
 - There is no screening performed by a switch or Signaling Transfer Point (STP) on the CPN parameter – non-geographic (even nonsense) numbers could be populated and passed
 - As noted, in some Call Forwarding and wireless scenarios, CPN may not be the appropriate parameter for determining jurisdiction of a particular call
 - Industry has agreed to populate and send JIP for jurisdictional purposes – not CPN

Questions for Consideration

Jurisdiction vs. Type of Call

- JIP, when signaled under the new rules (which thankfully are the old pre-LNP rules), is there to assist in the determination of jurisdiction and is not necessarily indicative of the type of call (e.g., interexchange vs. local)
 - So.....
 - if the type of call is interexchange, one might be tempted to use CPN for jurisdiction
 - however the JIP, because it is untouched from the source of the last call origination, is more appropriate and more accurate (see next page)
 - If the call is a legitimate roaming situation, only the JIP is appropriate for jurisdiction

Questions for Consideration

Populating EMI Cat 11 Records

Assuming that every standards body that the OBF has contacted and all their committees and working groups are solidly behind the latest JIP liaison

...and

Assuming all carriers will abide by the rules for generation and signaling of the JIP parameter as they have said they would

...and

Assuming that service providers are aware of those trunk groups that may be carrying combined traffic

...then

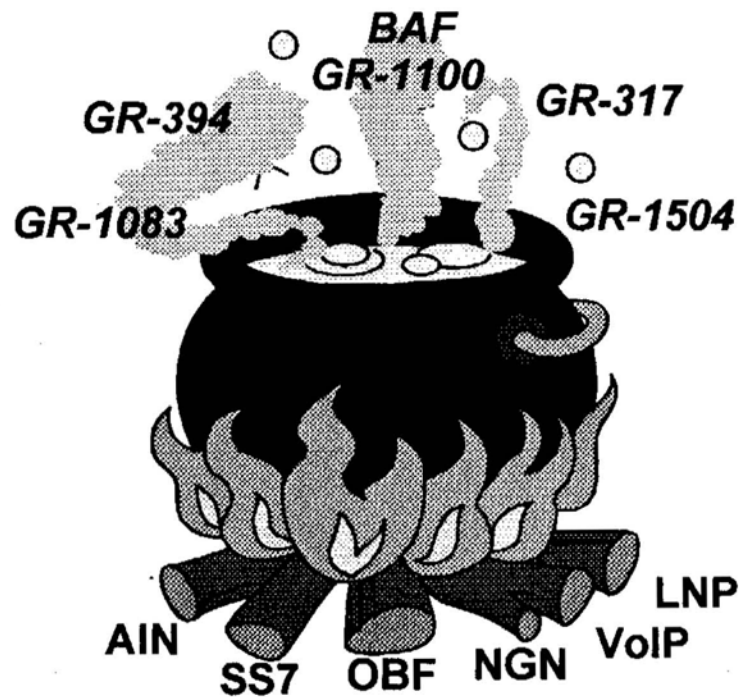
The logical path forward is to use the JIP, not CPN, whenever possible to determine jurisdiction

Issue 2735

Considerations

- Using JIP for jurisdiction does not mean that CPN should not be captured (when available) or should not be used for forensic purposes such as differentiating types of traffic, e.g., local from interexchange
 - Jurisdiction is not equivalent to traffic type
- Telcordia's AMA requirements will continue to stress the need for capturing all of the originating party information that may be available in the signaling and appending this information in Modules
- Given the industry's stated position on the JIP, the next Issue of GR-1083-CORE will address how to best capture and separately identify the signaled JIP in BAF

(Invitation to fund and participate in the next update of GR-1083-CORE is out in the Telcordia Digest – work will be done this summer with publication date in October)



Any Questions ?